Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

COMMENTS OF GENERAL COMMUNICATION, INC.

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SUMMARY

The Commission should not adopt the interim cap on competitive eligible telecommunications carriers ("CETC") high-cost support because, as currently proposed, the cap blocks support from those most in need and undermines universal service principles. The proposed cap has two major flaws.

First, it curtails universal service support, and, correspondingly, will eliminate opportunities for facilities and service deployment, to some of America's neediest and most underserved consumers – Native American households on tribal lands and in Alaskan Native regions. General Communication, Inc. ("GCI"), for example, currently has plans to roll out wireless facilities to provide local, long distance, and broadband services to nearly 200 rural Alaskan areas across the state, the vast majority of which currently have little or no access to comparable services. Under the cap as proposed, GCI's plans will grind to a halt, condemning these already underserved consumers to a future without the benefits of modern, advanced telecommunications networks comparable to those in urban areas.

The cap's negative impact on GCI's planned deployment is just one example. All available evidence shows that, across the country, Native American households on tribal lands and in Native regions continue to lag far behind the rest of the nation in telecommunications access. Yet it is precisely these areas, where telecommunications infrastructure and the associated high cost support have been slow to come, that will be most harmed by the cap, which will cut off any real opportunity for investment and service deployment to these areas.

To prevent this, GCI sets forth a proposal for a narrowly targeted exclusion to the cap, which would maintain uncapped funding, subject to strict conditions, for CETCs providing service to tribal lands and Alaskan Native regions. In particular, GCI's proposal requires any CETC collecting uncapped funds to deploy broadband service of at least 400 kbps moving up to 1 Mbps, imposes safeguards to ensure that support funds are deployed to advance basic connectivity, and eliminates duplicative support to multiple lines provided by a carrier to a residential or single line business account. Thus, in addition to preserving opportunities for investment where it is desperately needed, the cap exclusion proposal would also generate much-needed data on broadband characteristics and deployment, provide a limited geographic forum for testing long touted universal service reforms, and demonstrate how competition, over the long term, can improve service to consumers while bringing down overall levels of high-cost support.

Second, the cap, as proposed, fails to distinguish between services that predominantly substitute for the basic connectivity on which consumers have come to rely and those that predominantly complement that pre-existing basic connectivity. Any interim cap on CETCs should not apply to CETCs that predominantly provide service that substitutes for basic connectivity and, thus, compete in the same product market as the incumbent carrier. Instead, any interim cap that may be adopted should only apply to CETCs that compete in a different product market, *i.e.*, those that predominantly offer services that consumers purchase as a complementary service in addition to their basic connectivity.

Drawing the line for the cap between CETCs based on whether they predominantly provide substitute or complementary service is technologically neutral. It is also competitively neutral, allowing CETC substitutes and the ILEC, which compete directly against each other, to receive the same amount of support for providing the same service to the same customer. By contrast, the proposed cap, which would provide different support to CETC substitutes and the ILEC in those circumstances, would not only undermine the principle of competitive neutrality, but also blunt the efficiency and innovation gains from the competitive provision of universal service. Moreover, capping CETCs that offer predominantly substitute services would do little to rein in high-cost universal service spending because those carriers account for only a small and shrinking part of the high cost fund distributions, even without any cap in place.

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COMMENTS OF GENERAL COMMUNICATION, INC.

General Communication, Inc. ("GCI") submits these comments in response to the Commission's Notice of Proposed Rulemaking seeking comment on the recommendation of the Federal-State Joint Board on Universal Service ("Joint Board") that the Commission impose an interim cap on the amount of high-cost support that competitive eligible telecommunications carriers ("CETCs") may receive.[1]

As GCI explained in its recent comments on long term reform of the high-cost Universal Service Fund, any reforms to the high cost universal service system should support, rather than undermine, the 1996 Telecommunications Act's fundamental goals of encouraging marketplace competition and preserving universal service.[2] As proposed, the pro-rata cap is far too blunt and, as a result, sacrifices too much by ending

[1] *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 07-88 (rel. May 14, 2007); *Federal-State Joint Board on Universal Service*, Recommended Decision, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07J-1 (rel. May 1, 2007) ("Recommended Decision").

[2] *Comments of General Communication, Inc.*, WC Docket No. 05-337, CC Docket No. 96-45 (filed May 31, 2007) ("GCI Long Term Reform Comments").

opportunities for rural, high cost areas (including the hardest-to-serve areas) to benefit from modern, advanced telecommunications networks. Most importantly, the cap as proposed blocks support – and deployment of services – to some of the country's most underserved areas, including Native American tribal lands and Native Alaskan villages. As both the FCC and GAO have found, by every available statistic, these Native lands lag significantly behind the rest of the country in access to telecommunications services. Finally, because the cap also fails to properly distinguish between substitute services that provide basic connectivity and complementary services that augment basic connectivity, it fails to target the chief source of growth in the high cost fund – increased support from complementary services.

The Commission must modify the cap to correct these flaws. *First*, and most critically, the Commission should allow carriers serving Native lands, including tribal lands and Native Alaskan regions, to opt out of the cap if they can meet certain conditions and make certain commitments with respect to these hard-to-reach communities. As proposed by GCI,[3] this cap exclusion would preserve the opportunity for infrastructure deployment under current funding amounts on lower 48 tribal lands and in Native Alaskan regions, while requiring any CETC collecting uncapped funds to deploy broadband service, imposing safeguards to ensure that those funds are deployed to advance basic connectivity, and eliminating duplicative support to multiple lines provided by a carrier to a residential or single line business account. GCI's cap exclusion proposal, therefore, also has numerous benefits, including: creating a record on evolving

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[3] See Letter from Tina Pidgeon, V.P. of Federal Regulatory Affairs, GCI, to Marlene H. Dortch, Secretary, FCC, re Federal-State Joint Board on Universal Service, High Cost Universal Service Support, WC Docket No. 05-337; Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 31, 2007).

broadband definitions, providing much-needed subscribership data for tribal lands and Native Alaskan regions, testing out long-touted proposals for high-cost universal service reform, experimenting with how universal service reforms can drive broadband support, and demonstrating, over the long term, that competition can in fact improve and reduce the costs of universal service support.

Second, in adopting any cap, the Commission should distinguish between ETCs that predominantly provide basic connectivity and those that predominantly supplement basic connectivity, rather than between ILECs and CETCs. Only with these modifications can the cap control USF growth and maintain competitive neutrality, without harming those consumers most in need of supported services.

I. THE PROPOSED INTERIM CETC CAP BLOCKS USF SUPPORT – AND SERVICE DEPLOYMENT – WHERE IT IS MOST NEEDED.

As proposed, the cap will block USF support, telecommunications infrastructure investment, and service deployment to some of America's neediest and most underserved consumers – Native American households on tribal lands and in Alaskan Native villages. GCI, for example, has been preparing to deploy a wireless and satellite network that will bring high quality, reliable, economically-priced service – including wireless and broadband services – to hundreds of Native villages across Alaska. But the cap, as now proposed, will thwart such deployment – depriving rural consumers of the benefits of competitive service and, in some cases, of wireless or broadband service altogether, deepening the divide between communications haves and have-nots, particularly among Native American households on tribal lands and in Alaskan Native villages. To prevent this, the Commission should modify the cap to exclude those CETCs meeting certain eligibility criteria that are working to bring improved services – especially broadband services – to these underserved areas.

A. The Cap Will Prevent The Deployment of Wireless and Broadband Services To Rural Alaskan Communities.

The cap, as recommended by the Joint Board, puts at risk the deployment of innovative competitive services to Native lands, the very areas that have been left behind the rest of the nation when it comes to communications infrastructure and services. As currently proposed, therefore, the cap disproportionately harms those consumers most in need of high-cost USF support.

Its effect on Alaska illustrates this point. Currently, CETC efforts and, correspondingly, facilities deployment in Alaska have concentrated on the urban and suburban areas of Anchorage, Fairbanks, and Juneau, and to a lesser extent a few of the rural regional centers. Responding to this competitive pressure, both the incumbent LEC and GCI provide a full range of services to these consumers, including broadband connectivity. But CETCs have barely begun to penetrate rural Alaska. And without competitive pressure from CETCs, the ILECs in these villages simply have not delivered services comparable to those available in the relatively urban areas of Alaska. As a result, Alaskans in the vast majority of Bush villages outside the regional rural centers have little or no access to any broadband service that substantially exceeds the FCC's minimum 200 kbps threshold. In some areas, these consumers can get Internet access via

GCI's WISP service, which provides connectivity of 200 kbps.[4] In others, consumers have no Internet access at all.

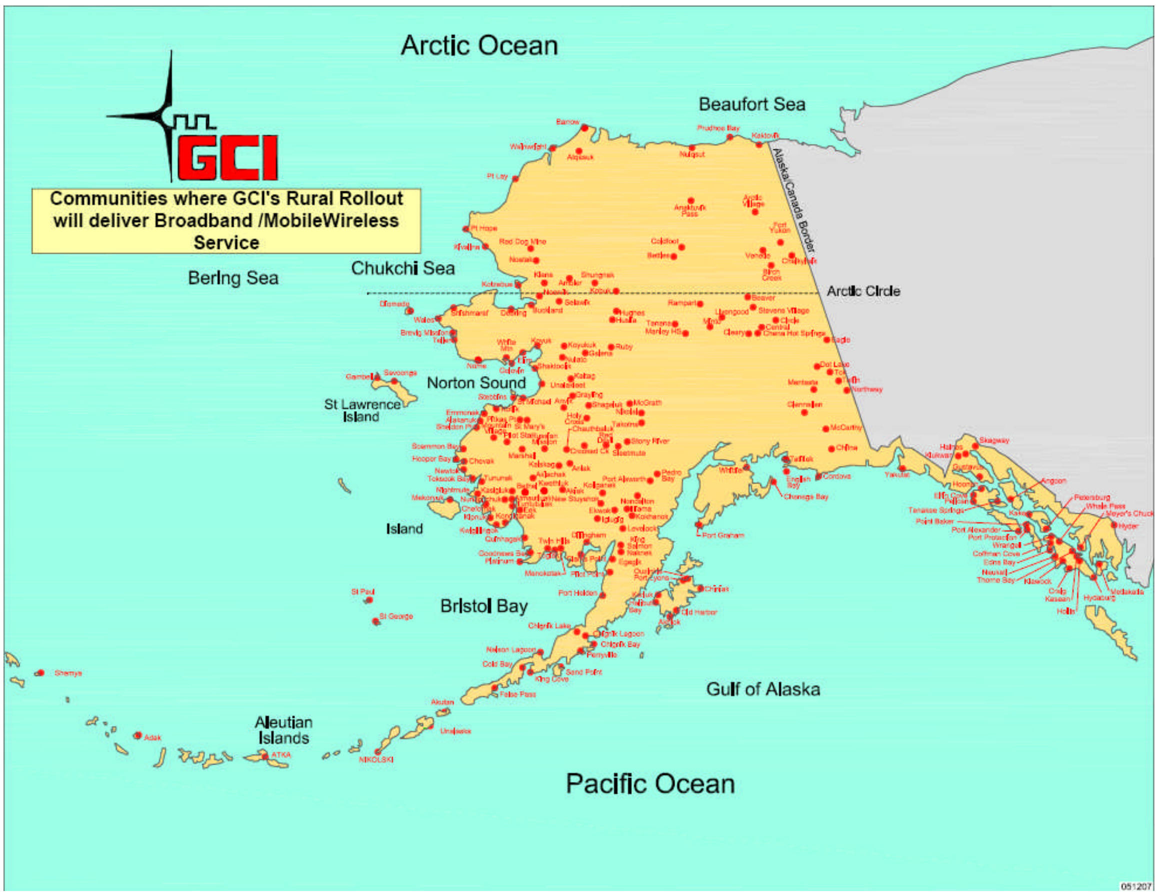
GCI has been preparing to roll out facilities – and bring local, long distance, and broadband Internet access service – to these rural Alaskan communities.[5] These communication services, which are the norm in lower-cost urban areas of Alaska, will provide access to education, commerce and public services – access that is key to the promotion of economic development, safety, and public wellbeing in these remote regions. In addition, GCI's entry into these rural areas infuses them with competition, pushing both GCI and the ILEC to bring efficient and innovative services to these hard-to-reach consumers. In these ways, GCI's planned deployment will truly fulfill the goals of universal service as envisioned by Congress, the Commission, and the Joint Board.

As seen on the map below, GCI's plans will improve tremendously the communications landscape in Alaska, providing local, long distance and higher speed broadband service not just to Alaska's urban and regional centers, but also to hundreds of tiny villages. In all areas, GCI will be offering services that are substitutes for – not merely complements to – those available from the ILEC. As reflected in the red dots, GCI will employ wireless technology as its principal last-mile distribution network to reach nearly 200 communities, from households on the Aleutian Islands, to towns on the bays that innervate the coastline, to the remote villages along the Arctic Circle and

[4] These 200 kbps wireless systems, however, are in need of upgrades, both to provide higher speeds and to achieve full CALEA functionalities for traffic traveling solely within a particular WISP or DSL node.

[5] GCI has been certificated to provide local service in the vast majority of Alaska, with the requirement that it provide service not just in the regional centers, but also in all the villages within a given ILEC study areas.

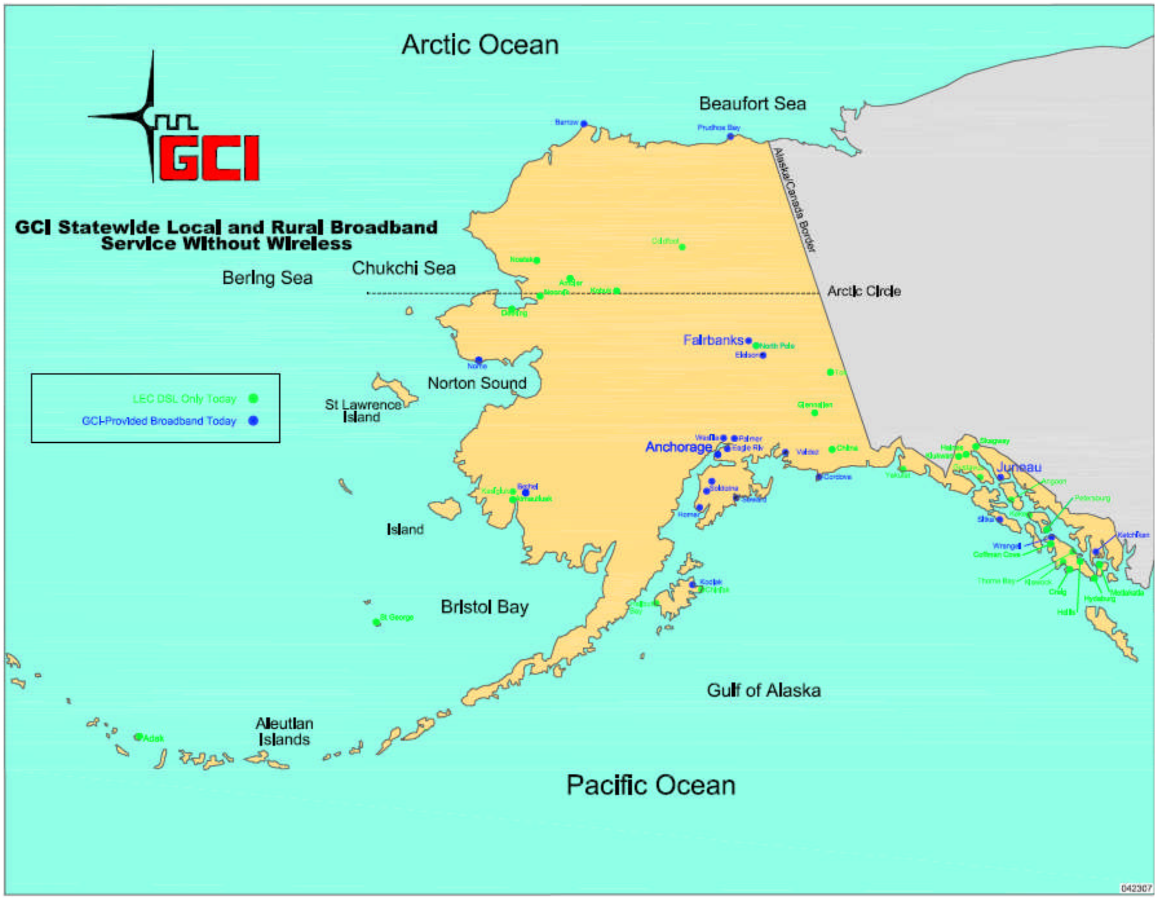
Canadian border.[6] Over three years, GCI anticipates that it can deliver Internet service of at least 1 Mbps to a substantial majority of the homes in each covered ILEC study area. As a result, thousands of households and businesses that must now rely on dial-up or WISP access (if they have Internet access at all) will have access to truly high-speed broadband service for the first time.



6 GCI will also offer wireline local service, via resale in areas where GCI does not have cable television facilities, for rural customers that request such service. GCI cannot, however, provide advanced broadband capability or the benefits of a diverse facilities-based network via resale.

If the FCC implements the CETC cap as proposed, however, none of this will happen. GCI will be forced to halt its planned deployment of a wireless broadband-capable network, relegating these rural consumers to second-class broadband service for the foreseeable future. In some instances, consumers will only be served by their incumbent carrier, which will face no competitive pressure to innovate, improve service quality, or reduce prices – and which has not delivered broadband to these villages to date despite having the local telephone service monopoly[7] and despite receiving substantial universal service support. In others, consumers will either have to rely on sluggish Internet connections or be denied access to Internet access service altogether. This is especially true because GCI's existing WISP service cannot continue in its present state: it must be either upgraded or discontinued, and it cannot be upgraded if the cap as proposed is adopted. As seen on the map below, access to services will be dramatically curtailed:

[7] *See* Regulatory Commission of Alaska (Updated) Internet Connectivity Spreadsheet (Jan. 12, 2007), *available at* http://www.state.ak.us/rca/Broadband/Internet_connectivity-070112.pdf.



GCI's plan cannot be achieved under the cap as proposed. Even for existing CETC facilities in urban Alaska, the cap will dramatically reduce available support. GCI estimates that the proposed cap will reduce per line USF payments to Alaskan CETCs by 16 percent in 2007 and by 34 percent in 2010, solely as a result of urban (primarily wireless) CETC line growth.[8] Without the proposed exclusion, the rural areas that GCI seeks to serve will have to compete for the same pool of capped funds as Alaska's urban areas. Under the cap, it is likely that the support available to GCI in these rural villages

8 Over the next three years, GCI estimates that the cap-imposed percentage reduction will grow substantially as a result of increased wireless penetration, population growth and, to a lesser extent, wireline CETC entry into the Mat-Su Valley and the Kenai Peninsula.

would fall to approximately half of what the ILEC currently receives per line served. This would not be sufficient support to finance the capital investment necessary to build these rural wireless broadband-capable networks.

Therefore, by slashing all available CETC support across the board, the cap, as currently proposed, threatens any broadband future for Native American households on tribal lands and in Alaskan Native villages. Under the proposed cap, investment in these areas will be economically unsustainable.

B. Consumers That Need High-Cost Support The Most – Native American Households On Tribal Lands And In Alaskan Native Villages – Should Be Protected From The Cap, Under Certain Conditions.

The Commission has committed to taking the extra steps, where needed, to address the needs of consumers on Native lands[9] – consumers who are most likely to have inadequate access to telecommunications services. In the *Twelfth Report and Order*, for example, the Commission sought to identify and remedy "the impediments to increased telecommunications deployment and subscribership in unserved and underserved regions of our Nation, including tribal lands and insular areas."[10] Based on the 1990 Census, the Commission reported that "although approximately 94 percent of all Americans have a telephone, only 47 percent of Indians on reservations and other tribal

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[9] In these comments, the term "Native lands" include tribal lands in the lower 48 states as well as Native Alaskan regions. More specifically, "Native lands" include areas described by 47 C.F.R.§ 54.400(e), namely, "any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments." 47 C.F.R. 54.400(e).

[10] Federal-State Joint Board on Universal Service, Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order, 15 FCC Rcd. 12,208, 12,211 (2000) ('Twelfth Report and Order").

lands have a telephone" and that "Indians represent 89 percent of the Nation's population in the one hundred zip codes with the lowest subscribership levels."[11] These statistics demonstrated that the existing support mechanisms were "not adequate to sustain telephone subscribership on tribal lands."[12] Accordingly, the Commission concluded that "[t]he extent to which telephone penetration levels fall below the national average on tribal lands" demanded "immediate Commission action to promote the deployment of telecommunications facilities in tribal areas and to provide the support necessary to increase subscribership in these areas."[13]

In response, the FCC created a number of programs targeted to residents of Native lands in order to create "financial incentives for eligible telecommunications carriers to serve, and deploy telecommunications facilities in, areas that previously may have been regarded as high risk and unprofitable."[14] In particular, the FCC created a fourth tier of federal Lifeline support, which provided additional monetary support to ETCs serving low-income individuals living on tribal lands.[15] The FCC also provided additional monetary support to qualified individuals under the federal Link Up program in order to reduce the initial connection charges for low-income subscribers on tribal lands.[16]

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[11] *Id.* at 12,224.

[12] *Id.* at 12,212

[13] *Id.* at 12,213.

[14] *Id.* at 12,213.

[15] *Id.* at 12,231-38.

[16] *Id.* at 12,238-42.

The Commission echoed these actions in a simultaneously issued Order on *Extending Wireless Telecommunications Services To Tribal Lands*.[17] As the Commission again explained, "[b]y virtually any measure, communities on tribal lands have historically had less access to telecommunications services than any other segment of the population."[18] Indeed, penetration rates on Native lands across the country were dramatically below the national average: 18.4 percent on the Navajo Reservation and Trust Lands in Arizona, New Mexico, and Utah; 22.2 percent on the Gila River Reservation in Arizona; 33.6 percent on the Alamo Navajo Reservation; and 49 percent on the Torres Martinez Reservation.[19] Because many Native lands are geographically isolated, moreover, the Commission recognized that the most efficient provision of basic telephone service could "involve the use of a terrestrial wireless technology, a satellite technology, or a combination of these technologies."[20] Accordingly, the Commission established bidding credits for auction winners who use licenses to provide services on underserved Native lands.[21]

Despite the FCC's efforts and these valuable programs, however, the problem of access to communications for Native American households on Native lands persists

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[17] *Extending Wireless Telecommunications Services To Tribal Lands*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 11,794 (2000) ("Extending Wireless Telecommunications Services To Tribal Lands").

[18] *Id.* at 11,798.

[19] *Id. citing* Bureau of the Census, Statistical Brief, *Housing of American Indians on Reservations--Equipment and Fuels*, SB/95-11, April 1995 at 2 (citing 1990 census data). *See also* Assessment of Technology Infrastructure in Native Communities, Prepared by the College of Engineering, New Mexico State University at 16 (Final Report, June 1999).

[20] Extending Wireless Telecommunications Services To Tribal Lands, 15 FCC Rcd. at 11,799.

[21] *Id.* at 11,796.

today. As a recent GAO Report found, the "telephone subscribership rate for Native American households on tribal lands . . . was still substantially below the national rate."[22] The "rate for Internet subscribership… was unknown."[23] Based on 2000 Census data, only 69 percent of Native American households on tribal lands in the lower 48 states had telephone service – about 29 percentage points lower than the national average penetration rate of 98 percent.[24] The penetration rate is only marginally better among Native American households in Alaska, where 87 percent – more than 10 percentage points below the national average – of homes have telephone service.[25] The GAO report specifically found that "the rural location of tribal lands (which increases the cost of installing telecommunications infrastructure)" combined with tribes' limited financial resources "to deter service providers from making investments in telecommunications on tribal lands, resulting in a lack of service, poor service quality, and little or no competition."[26]

Plainly, access to telecommunications and advanced services on Native lands still lags significantly behind the rest of the nation. Now is not the time to *cut back* on opportunities for support that can improve telecommunications deployment and subscribership on Native lands. But the cap will prevent new deployments in the very areas where competitive infrastructure deployment and associated high cost support

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22 *Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands*, Statement of Mark Goldstein, Director, Physical Infrastructure Issue, GAO-06-513T, at 4 (March 7, 2006) ("GAO Report").

23 *Id.*

24 *Id.*

25 *Id.*

26 *Id.* at 8.

funding have already been slow to come. As illustrated by its devastating impact on GCI's deployment plans, the cap sweeps in and puts at risk precisely those whose access to comparable telecommunications is most vulnerable. To minimize harm to these underserved populations, the FCC should modify the cap to ensure that those who are potentially most vulnerable to the impacts of the cap are not unduly denied opportunities for network infrastructure deployment while the cap is in place.

GCI recently proposed a framework for a conditional cap exclusion that would maintain uncapped funding in limited circumstances and subject to strict conditions and safeguards. These safeguards would ensure, for example, that CETCs could seek uncapped funding to serve Native lands if they will provide significant broadband deployment in those areas. Set forth in detail as Exhibit A, the framework is summarized as follows:

- Limited to Native Lands. The exclusion would be narrowly limited to services provided on Native lands, specifically "any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments."[27] Targeted support to these historically underserved areas tracks Commission precedent and existing universal service regulations for the Enhanced Lifeline, Enhanced Link-up, and the Native lands bidding credits discussed above.

- Commitment to Broadband Deployment. To receive uncapped funds, a CETC serving covered locations must offer broadband over its own facilities to 50 percent or more of covered location households in a study area and commit to increasing broadband deployment to reach at least 80 percent of households within three years.[28] At the outset, broadband speeds of 400 Kbps (one direction,

[27] 47 C.F.R. § 54.400(e). The exclusion would be elected on a study-area-by-study-area basis, with uncapped support available for those lines resident within a covered location in the study area.

[28] The broadband commitment will *not* render broadband a "supported service," as the commitment is solely an eligibility requirement. High-cost support will continue to be limited to the "provision, maintenance, and upgrading of facilities" to provide the basic supported services, including plant commonly used to provide supported

local network) should satisfy this criterion, increasing to a 1 Mbps requirement by the end of the three year commitment. Compliance would be verified by certifications and supported by reporting requirements.

- One Payment Per Residential/Single Line Business Account. CETCs would only receive one support payment under the exclusion per each residential or single line business account.[29] Unlike the defunct primary line proposal, this would be a voluntary limitation by the CETC, with no effect on ILEC support amounts. Consistent with the goals of universal service and perhaps a model for long term reform, the exclusion would be targeted to extending connectivity, not supporting multiple lines or handsets per customer.

- Voluntary Participation. CETCs would elect to participate in the cap exclusion. CETCs that choose not to do so, or that cannot meet the cap exclusion criteria, would remain subject to the cap.

- ILEC Support Level Unaffected. Since neither the cap nor the exclusion would apply to ILECs, there would be no effect on ILEC support in a given location as a result of a CETC decision to opt in or out of the exclusion for a particular covered location.

- "As If" Support For Capped CETCs. CETCs that do not opt-in to the exemption will be subject to the cap on an "as-if" basis, meaning that the support for capped per-line carriers within a given state will be calculated as if all CETCs (including those opting for the exclusion) in the state were subject to the cap. This methodology is true to the cost-controlling purpose of the cap, redistributes funds from multiple CETCs areas (areas that need funds less) to those unserved and underserved areas without CETCs today (areas that most need funds), and also allows only minimal, targeted growth in total high cost support from CETCs during the interim cap.

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services and broadband, as is the current practice for ILEC high cost support. *See Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report And Order, Twenty-Second Order On Reconsideration, and Further Notice Of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order In CC Docket No. 00-256, 16 FCC Rcd 11,244, 11,322 (¶ 200) (2001); *id. citing* 47 U.S.C. § 254(e).

[29] USAC, for the ICLS mechanism, already collects from CETCs line counts dividing lines between residential/single line business and multiline business lines. In its ex parte dated May 31, 2007, GCI did not include single line businesses. Including these lines makes implementation easier, and does not materially alter the proposal.

GCI's proposal, therefore, preserves critical opportunities for uncapped high-cost support, and thus service deployment, to historically underserved Native lands. But it also does much more. The CETC eligibility requirements and conditions will allow the Commission to test out long-touted universal service reforms in a narrowly targeted and tightly controlled setting. The broadband commitment, for example, will directly advance broadband deployment to underserved areas, reveal how universal service support mechanisms can be structured to drive such broadband deployment without generating additional fund demand, and create a record for assessing future adjustments to the broadband definition.[30] Reporting and verification requirements for eligible CETCs will also provide the Commission with much-needed data on telecommunications and broadband subscribership on Native lands.[31] More generally, by keeping opportunities for investment and entry into underserved high-cost areas alive, GCI's proposal ensures that, over the long term, competition can and will improve the provision of supported services and reduce overall universal service costs, consistent with the goals of universal service.

[30] As Commissioner Copps recently explained, such data is critical to the Commission's efforts to form "the basis for charting . . . a strategy for the ubiquitous penetration of truly competitive high-speed broadband." *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Notice of Inquiry, Statement of Comm'r Copps, GN Docket No. 07-45 (rel. Apr. 16, 2007).

[31] As the GAO has explained, the current data for Internet subscribership on Native lands is not available, making "it difficult to assess progress or the impact of federal programs to improve telecommunications" in these locations. *GAO Report* at 5.

II. ANY INTERIM CAP SHOULD NOT APPLY TO SERVICES THAT PREDOMINANTLY SUBSTITUTE FOR, RATHER THAN MERELY COMPLEMENT, THE BASIC SERVICE ON WHICH CONSUMERS HAVE COME TO RELY.

In its comments on long term universal service reform, GCI urged the Joint Board and the Commission to carefully distinguish in any reform efforts between those providers that predominantly offer their services as substitutes for the basic supported services and those that predominantly offer their services as complements to these services.[32] The Commission should apply this distinction to any interim cap.

There is a crucially relevant difference between substitute and complementary CETC services. In economic terms, one kind of good (or service) is said to be a "substitute" for another kind insofar as the two goods can be consumed or used in place of one another in at least some of their possible uses. As a result, the demand for the two goods – butter and margarine, for example – are inversely bound together by the fact that customers can trade off one good for the other if it becomes advantageous to do so. For the purpose of competition analyses by the Commission and antitrust authorities, multiple substitute services compete in a single product market. In contrast, a complementary good is a good that tends to be consumed along with another good. Unlike substitute goods, complementary goods compete in different product markets.

As GCI's recent comments explained, lumping all CETCs together ignores the undeniable reality that they generally fall into two categories, providing different types of service to customers. Some CETCs provide basic connectivity services that predominantly substitute for the traditional ILEC ETC service. For example, when a customer signs up for GCI wireline service, that customer typically does not also

[32] *GCI Long Term Reform Comments* at 11-13.

subscribe to the local service of the competing ILEC. GCI anticipates that the same will be true for its rural wireless service. As a result, these substitute CETCs compete head-to-head with the ILEC ETC, like butter and margarine. And if one provides better service for less money, customers make the switch. Other CETCs, however, predominantly offer services that merely complement the basic supported service, *i.e.*, services that consumers would subscribe to in addition to the basic supported service on which they have come to rely. While consumers could obtain connectivity from either the ILEC or the complementary CETC on its own, they tend to subscribe to both of them together.

As proposed, the cap ignores this distinction, applying across the board to all CETCs – even those that predominantly provide substitute services that compete directly with the ILEC. This is exactly the wrong course, harming both competition and the provision of efficient access to high-cost consumers. Instead, any interim cap on CETCs should apply only to CETCs providing predominantly complementary services and should not apply to CETCs that predominantly provide service that substitutes for ILEC basic connectivity.

Drawing the line for the cap between complementary CETCs on the one hand and substitute CETCs and ILECs on the other would treat like services in a like manner, and therefore is technologically unbiased, competitively neutral and legally defensible. To begin with, unlike a technology-based wireline CETC exemption, which the Joint Board declined to recommend,[33] the line between those CETCs subject to the cap and those that are not would not depend on the CETC's chosen technology, but rather on the service

[33] *Recommended Decision* ¶ 7.

provided to the consumer. While this approach would allow the same amount per supported line for CETC substitutes and ILECs for the duration of the cap, this is in no way inappropriate. To the contrary, it is mandated by the principles of universal service. Because CETC substitutes compete directly against the ILEC, applying the cap to one but not the other would mean that carriers providing the same service to the same customer would get different amounts of USF support. There is no basis for undermining competitive neutrality in this way.

Moreover, providing different support to ILECs and CETC substitutes would blunt the efficiency and innovation gains from the competitive provision of universal service. As Dr. David Sappington has explained, symmetric support policies both "help to ensure that consumers are served by the least-cost supplier," and "provide strong incentives for industry suppliers to minimize their current operating costs and to continually strive to secure even lower operating costs in the future."[34] The result – more efficient provision of supported services – minimizes the overall support required to ensure affordable and reasonably comparable services. This has been borne out by GCI's experience, in which the entry of a substitute CETC into the market spurs the incumbent carrier to provide cheaper, better, and more innovative services. This benefits consumers and lowers the overall costs of universal service.[35]

34 Sappington, David E. M., *Harnessing Competitive Forces to Foster Economical Universal Service*, at 25, attached to GCI Long Term Reform Comments as Exhibit 1.

35 GCI has provided details of such competitive responses in a number of its previous filings with the Commission. See, e.g., *Comments of General Communication, Inc.*, WC Docket 05-337 (filed Oct. 10, 2006); *Comments of General Communication, Inc.*, CC Docket 96-45, WC Docket 05-337 (filed March 27, 2006); *Reply Comments of General Communication, Inc.*, CC Docket 96-45, WC Docket 05-337 (filed May 26, 2006); *Comments of General Communication, Inc.*, WC Docket No. 05-195; CC Docket 96-45 (filed October 18, 2005).

As GCI's long term reform comments explained, the alleged "problem" with providing the same amount of support to competing suppliers of substitute services, lies in basing the support for any carrier on the ILEC's costs under a rate-based, rate-of-return system. That system has long been recognized to produce inefficiency and wasteful spending.[36] Thus, even in the short term, the solution is not to provide different levels of support to direct competitors by capping those CETCs that predominantly provide services that substitute for the ILEC's. As explained above, this will only stunt competition and further encourage inefficient service provision. The solution, as GCI has proposed,[37] is to move *all* carriers to a neutral basis of support – the minimum support necessary to provide affordable service to high-cost areas on a fixed per line basis.

Moreover, wireline CETCs, which are likely offering predominantly substitute services, account for only a small and shrinking part of the high cost fund distributions. Thus, imposing the cap on predominantly substitute CETCs will do little to serve the cap's purpose "to rein in the explosive growth in high-cost universal service support disbursements."[38] According to the most recent USAC statistics, in 2006, these providers of substitute services received only $15 million in support, with first quarter 2007 distributions on an annualized pace even below that level.[39] Thus, based on the first

36 *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6818-20 (1990); *Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 87-313, 4 FCC Rcd 2873, 2899-92 (¶¶29-35) (1989).

37 *GCI Long Term Reform Comments* at 24-25.

38 *Recommended Decision* ¶ 1.

39 *See* High Cost Program Support Distribution by Wireline & Wireless ETCs (April 23, 2007), *available at* http://www.usac.org/_res/documents/about/pdf/fund-facts/HC%20Wireline-Wireless%20Distribution%20042307.pdf.

quarter 2007 distributions, annualized, wireline CETCs are on a pace to receive less than $12 million in 2007, falling below 2006 levels ***without the application of any cap***. By contrast, the wireless CETCs, which generally offer services that complement the basic supported services, received $965 million in 2006, and based on the first quarter 2007 distributions are on a pace to exceed $1 billion in 2007.[40]

Applying the cap to services that predominantly complement the ILEC's service, therefore, would do much to achieve USF cost control, without raising the same policy problems as applying the cap to substitute services. Complementary CETCs typically, in the main, do not compete with ILECs and CETC substitutes (or do so only to a limited extent). Instead, complementary services are, by definition, bought by consumers at the same time as ILEC or CETC substitute services.

Of course the line between CETC substitutes and complements can be blurry (and will blur even further as the telecommunications industry develops). While most wireline CETCs provide substitute service and most wireless CETCs provide complementary service, some customers do "cut the cord" and substitute a CETC wireless service for their ILEC ETC wireline service. But it is possible to distinguish between services that are predominantly substitutes for, and those that are predominantly complements to, the basic supported services. Specifically, GCI proposes that any CETC be considered a substitute CETC when more than half of its customers within the designated service area use its service for basic connectivity. Applying this test and exempting CETC substitutes from the cap, will serve the goals of universal service without needlessly stifling competition.

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[40] *See id*. Of course, any CETC would have the opportunity to demonstrate that it provided a substitute service.

For all of these reasons, the FCC should address reforms to high cost support for CETC substitutes and ILECs together, in the companion proceeding on long term, comprehensive reforms and should not adopt an interim cap that fails to distinguish between substitute and complementary services.

CONCLUSION

For the reasons above, the Commission should not adopt the cap as proposed. Instead, GCI respectfully requests that any cap adopted by the Commission be modified to incorporate the cap exclusion proposal described above and set forth in detail in Exhibit A. In addition, any cap should not apply to those CETCs that compete in the same product market as the incumbent carrier, namely, those that predominantly provide services that substitute for the basic connectivity on which consumers have come to rely.

Respectfully submitted,

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June 6, 2007

EXHIBIT 1

May 31, 2007

Tina M. Pidgeon
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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: *Federal-State Joint Board on Universal Service, High Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; ***Written Ex Parte Filing***

Dear Ms. Dortch:

General Communication, Inc. ("GCI") has previously expressed its deep concern that implementation of the proposed CETC-only cap on the high cost fund will impede the deployment of innovative wireline, wireless, and broadband services for Alaska and similarly affected areas.[1] This concern arises because of the distinctly different impacts the proposed state-based cap has on those locations where competitive infrastructure and associated high cost support funding have been amassed under the current system and those locations where competitive infrastructure deployment and associated high cost support funding have been slower to come. The cap proposal puts at risk the deployment and offering of innovative competitive services by CETCs seeking to build out highly rural areas that have generally been neglected to date, particularly where USF-supported urban and suburban population centers in the same state are seeing large growth in CETC subscribership. This risk is demonstrated by GCI's recent filings, illustrating its planned deployment of Alaska-wide mobility and broadband coverage over the next four years (including more than 200 villages) under current funding levels and the stark absence of such coverage under the cap.[2]

[1] *See* Letter from Tina Pidgeon, V.P. Federal Regulatory Affairs, GCI, to Commissioner Deborah Taylor Tate, Chair, Federal-State Joint Board on Universal Service, and Commissioner Ray Baum, State Co-Chair, Federal-State Joint Board on Universal Service, *Written Ex Parte*, WCB Docket No. 05-337 and CC Docket No. 96-45 (filed April 3, 2007).
[2] *See, e.g.*, Letter from Brita Strandberg, Harris, Wiltshire & Grannis, to Marlene H, Dortch, Secretary, FCC, *Notice of Oral Ex Parte*, WCB Docket No. 05-337 and CC Docket No. 96-45, Attachments (filed May 18, 2007).

Just as the Commission recognized in establishing Tier Four funding under the Lifeline program and additional funding under the Linkup program ("Tier Four Lifeline/Linkup"), the locations most susceptible to such a divide are tribal lands in the lower 48 states and Alaska Native Regions (as defined in the Alaska Native Settlement Claims Act).[3] This is why a limited exclusion from the cap is likewise appropriate for these areas to ensure that those who are potentially most vulnerable to the impacts of the cap are not unduly denied opportunities for network infrastructure deployment while it is in place.

GCI proposes here a framework for such an exclusion under which uncapped funding would remain available for qualifying CETCs serving covered locations. As proposed, such an exclusion would preserve the opportunity for infrastructure deployment under current funding amounts on lower 48 tribal lands and Alaska Native Regions during any cap, while requiring a broadband service commitment from any CETC collecting uncapped funds and imposing safeguards to ensure that uncapped funds would be deployed in a narrowly targeted fashion.

First, the cap exclusion would be available only for services provided on tribal lands and Alaska Native Regions (the "covered locations"), which are those locations where Tier Four Lifeline/Linkup support is available pursuant to Section 54.400(e) of the Commission's rules. As the Commission previously concluded, historically low subscribership in these areas demonstrates that something beyond standard universal service support mechanisms are required to improve and sustain telephone subscribership.[4] Using the existing universal service regulations, the exclusion would be available to providers serving "any federally recognized Indian tribe's reservation, Pueblo, or Colony, including for reservations in Oklahoma, Alaska native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments."[5]

Second, a CETC serving a covered location would qualify for the exclusion by first offering broadband service over its own facilities to 50% or more of the households throughout the covered location within a study area ("Qualified CETCs"),[6] with a commitment to increasing coverage to at least 80% of the households over the next three years to maintain exclusion eligibility. GCI proposes using 400 kbps (one direction, local network) as the initial standard,

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[3] *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12,208 (2000) ("*Tribal and Insular Areas Twelfth Report and Order*"); *see also Extending Wireless Telecommunications Services to Tribal Lands, Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 11794 (2000) (establishing tribal lands bidding credits).

[4] *See Tribal and Insular Areas Twelfth Report and Order* at ¶ 2 (concluding that "existing universal service support mechanisms are not adequate to sustain telephone subscribership on tribal lands").

[5] 47 C.F.R. § 54.400(e). The Commission has implemented a stay of this rule only to the extent that it applies to "near reservation" areas. *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 17,112 (2000).

[6] The covered locations will not always coincide with study area or designated service area boundaries, as the exclusion applies only to those lines resident within a covered location.

increasing to 1 Mbps over the same three year period. Compliance would be verified by certifications and supported by reporting requirements.

The broadband commitment will ensure that providers benefiting from the exclusion have a demonstrated commitment to facilities deployment in traditionally unserved and underserved areas, create a record for assessing future adjustments to the broadband definition, and generate data to analyze broadband deployment in covered locations where typically only anecdotal information has been available.[7] The broadband commitment will *not* render broadband a "supported service", as the commitment is solely an eligibility requirement. Funding will continue to be limited to the "provision, maintenance, and upgrading of facilities" to provide the basic supported services, including plant commonly used to provide supported services and broadband, as is the current practice for ILEC high cost support.[8]

Third, uncapped per line support under the exclusion would be limited to one payment per each residential account.[9] This limitation would ensure that funding under the exclusion would be narrowly targeted for the purpose of extending connectivity, and not for the proliferation of multiple lines or handsets for a single household. Having such a limitation in place during the interim cap would help establish whether such an approach would be a suitable option for long term reform. Moreover, the limitation should not be confused with the defunct primary line proposal. The "one payment per account" approach is a voluntary limitation assumed by a Qualified CETC that does not disturb ILEC support amounts, whereas the primary line proposal required customers to choose the line that would be supported and resulted in the loss of ILEC support were a customer to designate an alternative provider service as "primary."

Fourth, CETC participation in the exclusion from the cap would be voluntary. Any CETC that did not or could not opt into the exclusion would simply remain subject to the cap as may be adopted by the FCC. Since the proposed cap does not include ILECs, the exclusion would have no affect on the USF support they receive. Of course, a wireless affiliate of an ILEC could participate in the exclusion if it satisfied the broadband criteria and accepted the payment limitation.

Fifth, the exclusion would be elected on a study-area-by-study-area basis, with uncapped support available for those lines resident within a covered location in the study area. Except for the one-payment-per-residential-account limitation specifically provided above, support for a Qualified CETC under the exclusion would continue to be provided pursuant to Section 54.307,

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[7] *See* GAO Report, "Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands" (rel. Mar. 7, 2006) at 5 ("The rate of Internet subscribership for Native American households on tribal lands is unknown because neither the Census Bureau nor FCC collects this data at the tribal level."), available at www.gao.gov/cgi-bin/getrpt?GAO-GAO-06-513T.
[8] *See Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report And Order, Twenty-Second Order On Reconsideration, and Further Notice Of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order In CC Docket No. 00-256*, 16 FCC Rcd 11,244, 11,322 (¶ 200) (2001).
[9] This limitation would not apply to business service accounts.

as it currently exists. The process for identifying eligible lines would be the same as that for assessing Tier Four Lifeline/Linkup eligibility. Any CETC that did not opt into the exclusion in a given covered location would simply remain subject to the cap for that state (*i.e.*, its per line support would be reduced by the percentage calculated under the cap). Again, since neither the cap nor the exclusion would apply to ILECs, there would be no effect on ILEC support in a given location as a result of a CETC decision to opt into the exclusion for a particular covered location, or not.

Sixth, for any state where a Qualified CETC provides service, the total amount of CETC support would be equal to the capped amount plus the difference between the capped amount and uncapped amount for those lines within a covered location served by a Qualified CETC. Support for CETCs within such a state will first be calculated as dictated by the cap implementation (for example, as set forth in paragraph 10 of the *Recommended Decision*), to determine the state-specific reduction factor. Qualified CETCs would continue to receive the uncapped amount for those lines served within the covered locations in a study area and the capped amount for those lines served outside of covered locations, and other CETCs would receive the capped amount for all lines served. This methodology generally preserves the growth discipline the Joint Board sought to achieve through the cap, allows for the redistribution of funds from network rich areas with multiple CETCs to those unserved and underserved areas typically having no CETCs today, and also ensures that the exclusion results in only modest and highly targeted growth in total high cost support during the interim cap.

A cap exclusion crafted in this way will ensure that a cap will not unintentionally, but no less arbitrarily, deepen the divide between today's communications haves and have-nots. A targeted exclusion for tribal lands and Alaska Native Regions will help minimize the potential harm to historically underpenetrated, underserved, and undersubscribed populations that would be caused by interruption in funding based on current ILEC support levels. A cap exclusion may not guarantee deployments to such traditionally left-behind locations, but it will at least keep open the window of opportunity, while at the same time providing the chance to field test long-touted, but never implemented proposals for the preservation and advancement of universal service.

GCI respectfully requests that the exclusion described herein be incorporated into any funding cap that the Commission may adopt.

Sincerely,

/s/
Tina Pidgeon
Vice President, Federal Regulatory Affairs

cc: Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Taylor Tate
Commission Robert M. McDowell
Dan Gonzalez
Ian Dillner
Scott Deutchman
Scott Bergmann
Nick Alexander
John Hunter
Tom Navin
Renee Crittendon
Randy Clarke
Jeremy Marcus
Jennifer McKee
Ted Burmeister
Alex Minard